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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE NATIONAL SECURITY AGENCY TELECOMMUNICATIONS RECORDS LITIGATION, MDL No. 1791 This Document Relates To: ALL ACTIONS	MDL Docket No 06-CV-01791 VRW **CLASS ACTION** **DECLARATION OF CINDY A. COHN IN SUPPORT OF PLAINTIFFS' RESPONSE TO ADMINISTRATIVE MOTION OF THE UNITED STATES TO CHANGE TIME (CIV. L.R. 6-3) AND FOR SCHEDULING ORDER** Courtroom: 6, 17th Floor Judge: The Hon. Vaughn R. Walker

Dockets.Justia.com

I, Cindy A. Cohn, hereby declare:

1. I am an attorney at law, licensed to practice before all of the courts of the State of California and am counsel of record in the above-referenced case. I am also Co-chair of the Plaintiffs' Executive Committee in the above-referenced case. The facts contained in this declaration are known to me of my personal knowledge and if called upon to testify about them, I could and would competently do so.

2. On February 20, 2007, the Court issued an Order requiring, among other things, that the carrier defendants and the government to respond to any non-stayed complaints in this MDL by March 29, 2007, over five weeks later. Dckt #347.

3. A week after the February 20 Order, on February 27, 2007, the counsel for the Government, including Anthony Coppolino, contacted me on behalf of the plaintiffs and stated that they were interested in coordinating the various cases that have been assigned to the Court through the MDL process and to agree to an overall schedule that would be "manageable" by the parties and the court.

4. I agreed to undertake to coordinate a manageable schedule on behalf of the plaintiffs in the various cases, including:

a. The remaining carrier cases that were not yet stayed, including Verizon, MCI, the non-*Hepting* AT&T cases, and BellSouth.

b. The cases based on state law only that had sought remand.[1]

c. The *Center for Constitutional Rights v. Bush* case ("*CCR*") recently transferred from the Southern District of New York that has fully briefed motions pending, and

[1] The state-law-only cases are *Riordan v. Verizon Communications, Inc., Campbell v. AT&T Communications of California, Roche v. AT&T Corp., Chulsky v. Cellco Partnership d/b/a/ Verizon Wireless, Bready v. Verizon Maryland,* and *Mink v. AT&T Communications of the Southwest, Inc.* All of them except *Bready* have agreed to be folded into the scheduling for the federal claims cases against the relevant defendants. Thus, *Chulsky, Campbell, Roche* and *Mink* have offered to stay their cases, along with the class actions that have been stayed (Verizon for *Chulsky*, non-*Hepting* AT&T cases for *Campbell, Roche and Mink*). *Riordan* counsel offered to allow any motion to dismiss in its case, which is not a class action and is based on different state laws than those raised in the class action complaint, to be heard on the same schedule as the Verizon motion to dismiss.

d. The *Shubert v. Bush* case, another recently transferred case from the Eastern District of New York that was brought against just the government but that is a class action.[2]

5. On March 6, 2007, the government submitted a proposed schedule to us that would have required all of the remaining carrier motions and corresponding state secrets motions to be briefed and decided simultaneously, provided a delay until May 4 for the government's state secrets motions and until May 18 for the carrier motions, and stretched the briefing schedule out until a September, 2007 hearing. Attached hereto as Exhibit A and incorporated herein by this reference is a true and correct copy of the Government's proposed schedule and the cover email that accompanied it.

6. After several discussions with the various parties and the defendants and government, on March 7, 2007, I proposed during a conference call with governmental and carrier counsel an omnibus alternative approach that did the following:

a. Stayed the non-*Hepting* AT&T cases, including the state claims only cases until after a decision on *Hepting* appeal as long as the non-AT&T defendants agreed to respond to discovery issued to them in the context of *Hepting*.

b. Folded the state law cases into the schedule for the federal cases with the exception of *Bready*, a state law claims case from New Jersey that has an administrative motion currently pending before this Court seeking hearing on its remand motion.

c. Reduced the burden on the parties and the Court by granting an extension to the Verizon and BellSouth defendants until some time period after the Motion to Dismiss by MCI was decided.

d. Largely adopted the scheduling for *CCR* and *Shubert* that the government had proposed.

7. The government responded by rejecting our schedule and asking plaintiffs to stipulate that Verizon and MCI can file joint motions to dismiss and that the government's state secrets motion would be due in late April with the carrier motion due approximately two weeks thereafter.

8. After consultation with my co-counsel, on March 9, 2007, I notified the counsel for the government that plaintiffs refused this offer and again offered an alternative schedule, this time

[2] The Government represented that they would be negotiating separately with counsel for the State Officials cases, and rejected plaintiffs' suggestion that those discussions be folded in.

with a specific written plan. Attached hereto as Exhibit B is a true and correct copy of the email and plaintiffs' proposed schedule.

9. Attached hereto as Exhibit C is a true and correct copy of the portion of the transcript of the November 17, 2006 Case Management Conference in which the Court ordered a single Complaint filed against Verizon and MCI.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: ____March 15, 2007________ ____________//s//__________________

CINDY A. COHN